

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3
4 UNITED STATES OF AMERICA,)
5) CASE NO.: 1:14-CR-189
6 VS.)
7 ABDELMAJI K. LABABNEH,)
8 Defendant.)
9

10 TRANSCRIPT OF PROCEEDINGS
11 BEFORE THE HONORABLE MAE A. D'AGOSTINO
12 THURSDAY, AUGUST 14, 2014
13 ALBANY, NEW YORK

14 **FOR THE GOVERNMENT:**

15 Office of the United States Attorney
16 By: Jeffrey C. Coffman, AUSA
17 445 Broadway, Room 214
18 Albany, New York 12207

19 **FOR THE DEFENDANT:**

20 Kindlon & Shanks
21 By: Terence L. Kindlon, Esq.
22 74 Chapel Street
23 Albany, New York 12207

24 **THERESA J. CASAL, RPR, CRR, CSR**
25 Federal Official Court Reporter
445 Broadway, Room 509
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1 (Court commenced at 12:43 PM.)

2 THE COURT: Be seated everyone.

3 THE CLERK: Today is Thursday, August 14, 2014.

4 The time is 12:43 PM. The case is United States of America
5 versus Abdelmaji K. Lababneh, also known as Abu Khalaf, also
6 known as David, case number 14-CR-189. We are here today
7 for a change of plea hearing. May we have appearances for
8 the record, please?

9 MR. COFFMAN: Jeffrey Coffman for the United
10 States. Good afternoon, your Honor.

11 THE COURT: Good afternoon.

12 MR. KINDLON: Terence Kindlon, 74 Chapel Street,
13 here on behalf of Mr. Lababneh, who is present in court
14 seated at counsel table to my immediate right. Good
15 afternoon, your Honor.

16 THE COURT: All right. Good afternoon all. I
17 understand we're here today because the defendant wants to
18 enter a guilty plea, is that correct?

19 MR. KINDLON: That is correct, your Honor.

20 THE COURT: All right. Britney, would you swear
21 in Mr. Lababneh?

22 THE CLERK: Would you please raise your right hand
23 and state your full name for the record?

24 THE DEFENDANT: Abdelmaji Lababneh.

25 (Defendant duly sworn.)

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1 THE COURT: All right, be seated, sir.

2 Mr. Lababneh, I'm going to ask you some questions under oath
3 now. Please answer right into the microphone so I can hear
4 your answers.

5 Before I accept your plea, I must explain to you
6 the rights that you give up by pleading guilty and the
7 consequences of pleading guilty, and I'll ask you some
8 questions, and if I'm satisfied that your plea is knowing
9 and intentional, I will accept it. However, before I go
10 further, let me ask you: Have you received and read a copy
11 of the indictment?

12 THE DEFENDANT: Yes, Honor.

13 THE COURT: Have you had adequate time and
14 opportunity to discuss the indictment and all aspects of
15 your case with your attorney, Mr. Kindlon?

16 THE DEFENDANT: Yes, Honor.

17 THE COURT: Since you're pleading guilty, you're
18 giving up your right to a trial and I will now discuss with
19 you some of those rights.

20 You have the right to continue to plead not
21 guilty. You have a right to be represented by an attorney
22 at trial and at every other stage of the proceedings, and if
23 you cannot afford one, one will be appointed for you by the
24 Court. You have the right to a speedy and a public trial by
25 an impartial jury or to a trial by the Court without a jury

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1 if you consented, the Government consented and the Court
2 approved. At the trial, you would be presumed to be
3 innocent under the law and the burden of proof would be upon
4 the Government to establish your guilt beyond a reasonable
5 doubt to the satisfaction of a jury or to the satisfaction
6 of the Court if you waived a jury trial, the Government
7 consented and the Court approved.

8 At the trial, you would have the right to confront
9 any witnesses against you, the right to see and hear those
10 witnesses and to cross-examine them. You would have the
11 right to remain silent or to testify in your own behalf, but
12 you could not be compelled to incriminate yourself or to
13 testify at all, and your silence could not be held against
14 you in any way, and no inference of guilt could be drawn
15 against you from your failure to testify. You would have
16 the right to use the subpoena or other processes of the
17 Court to compel witnesses to attend trial and testify and
18 also to obtain documentary evidence which you might wish to
19 offer in your defense.

20 If I accept your plea of guilty, sir, you are
21 waiving -- that is, you are giving up -- each of these
22 rights that I've just listed, there will be no trial and I
23 will have the same power to sentence you as if you had been
24 found guilty after a trial on the count to which you're
25 pleading guilty.

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1 Mr. Lababneh, do you understand that if your plea
2 is accepted, you will be adjudged guilty of that offense the
3 same as if there was a jury trial, and the jury, after
4 hearing all of the evidence, found you guilty?

5 THE DEFENDANT: Yes, Honor.

6 THE COURT: After the clerk takes your plea, I'm
7 going to ask you if you're pleading guilty freely and
8 voluntarily; about whether any promises of leniency have
9 been made to induce you to plead guilty, other than what is
10 contained in the plea agreement and the addendum, if any;
11 about whether threats or force have been used to induce you
12 to plead guilty; about whether, as you stand here today,
13 you're under the influence of any narcotics, drugs, pills or
14 medicines which would, in any way, impair your ability to
15 understand the nature of the charge and the consequences of
16 pleading guilty; about whether you did, in fact, commit the
17 crime charged so that I can determine whether there is a
18 factual basis for your plea. You will answer my questions
19 under oath, on the record, in the presence of your attorney.
20 Your answers, if not truthful, could later be used against
21 you in a prosecution for perjury or for making a false
22 statement.

23 I will again assure myself that you've been given
24 a copy of the charge -- the indictment -- that you've read
25 it, you understand it, and I will assure myself that you've

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1 had an opportunity to discuss this case with your attorney
2 and that your attorney has advised you of the nature of the
3 charge, your rights, the factual basis for the plea and the
4 consequences of pleading guilty, and that you and your
5 attorney have discussed any viable defenses that you might
6 have. And then I will question your attorney separately.

7 I must also tell you that your guilty plea
8 constitutes a waiver of your right against
9 self-incrimination so I want to warn you not to plead guilty
10 unless you are, in fact, guilty of the charge made against
11 you in Count I of the indictment to which you are pleading
12 guilty.

13 Mr. Lababneh, do you understand all of the rights
14 that you have, sir?

15 THE DEFENDANT: Yes, Honor.

16 THE COURT: Do you still wish to plead guilty?

17 THE DEFENDANT: Yes, Honor.

18 THE COURT: All right. Britney, would you take
19 the plea?

20 THE CLERK: Mr. Lababneh, would you please stand?

21 In the case of the United States of America versus
22 Abdelmaji K. Lababneh, also known as Abu Khalaf, also known
23 as David, case number 14-CR-189, the grand jury charges, in
24 Count I of the indictment, conspiracy to possess with intent
25 to distribute and distribute a controlled substance.

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1 Between on or about May 17, 2013, and on or about May 23,
2 2013, in Rensselaer County, in the Northern District of
3 New York, and elsewhere, the defendant, Abdelmaji K.
4 Lababneh, and others, conspired to knowingly and
5 intentionally possess with intent to distribute and to
6 distribute a controlled substance, in violation of Title 21,
7 United States Code, Section 841(a)(1). As to defendant
8 Abdelmaji K. Lababneh, the violation involved XLR11, a
9 Schedule I controlled substance, in violation of Title 21,
10 United States Code, Section 841(b)(1)(C).

11 All in violation of Title 21, United States Code,
12 Section 846.

13 Mr. Lababneh, how do you plead to Count I of the
14 indictment?

15 THE DEFENDANT: Guilty.

16 THE CLERK: Do you acknowledge and admit to the
17 forfeiture allegation?

18 THE DEFENDANT: Yes.

19 THE CLERK: Thank you.

20 THE COURT: All right. Be seated, sir.

21 Mr. Lababneh, just for the record, again, would you tell me
22 your full name?

23 THE DEFENDANT: Abdelmaji Lababneh.

24 THE COURT: How old are you?

25 THE DEFENDANT: Forty-eight.

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1 THE COURT: What country or countries are you a
2 citizen of?

3 THE DEFENDANT: Jordan.

4 MR. KINDLON: And U.S.

5 THE DEFENDANT: And USA.

6 THE COURT: What's the highest grade of school
7 that you completed?

8 THE DEFENDANT: College.

9 THE COURT: Where are you living at the present
10 time?

11 THE DEFENDANT: Now?

12 MR. KINDLON: If you're released.

13 THE DEFENDANT: 267 East 202nd Street,
14 apartment 4, Bronx, New York, 10458.

15 THE COURT: Are you married?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you have children?

18 THE DEFENDANT: Yes.

19 THE COURT: How old are your children?

20 THE DEFENDANT: The youngest one is one week.

21 THE COURT: What type of work do you usually do?

22 THE DEFENDANT: Suppliers.

23 THE COURT: Were you working before you were
24 arrested?

25 THE DEFENDANT: Yes.

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1 THE COURT: And what was that work again?

2 THE DEFENDANT: Recycle bag -- garbage bag and
3 recycling bag and shopping bag.

4 MR. KINDLON: He sells paper products to stores,
5 your Honor.

6 THE COURT: Okay. Do you use narcotics at the
7 present time?

8 THE DEFENDANT: No.

9 THE COURT: Have you ever used narcotics in the
10 past?

11 THE DEFENDANT: Never.

12 THE COURT: Have you taken any drugs, narcotics or
13 alcohol within the last 24 hours?

14 THE DEFENDANT: Never.

15 THE COURT: Are you taking any kind of pills,
16 drugs or medicine that's been prescribed for you by a
17 doctor?

18 THE DEFENDANT: Yes.

19 THE COURT: What are you taking?

20 THE DEFENDANT: Sinvastin, Metformin, it's for
21 blood pressure and cholesterol and diabetic.

22 THE COURT: Okay.

23 THE DEFENDANT: And aspirin, 80 milligram a day.

24 THE COURT: Are you being treated for any issues
25 with your mental health at the present time?

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1 THE DEFENDANT: No.

2 THE COURT: Is there any reason why your ability
3 to understand our discussion today is hindered or impaired
4 in any way?

5 THE DEFENDANT: No.

6 THE COURT: Was your attorney hired by you or
7 appointed by the Court?

8 THE DEFENDANT: By me.

9 THE COURT: Are you fully satisfied with
10 Mr. Kindlon's representation of you?

11 THE DEFENDANT: Yes.

12 THE COURT: Has he advised you of your rights?

13 THE DEFENDANT: Yes.

14 THE COURT: Is there anything that you need to ask
15 the Court about this proceeding?

16 THE DEFENDANT: No.

17 THE COURT: Has your lawyer or any Assistant
18 United States Attorney, any Government agent or anyone else
19 made any promise that you would be treated leniently or any
20 other kind of promise to induce you to plead guilty, other
21 than what is contained in the plea agreement and the
22 addendum, if any?

23 THE DEFENDANT: No.

24 THE COURT: Has any force or threat been used
25 against you to induce you to plead guilty?

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1 THE DEFENDANT: No.

2 THE COURT: Are you pleading guilty freely and
3 voluntarily?

4 THE DEFENDANT: Yes.

5 THE COURT: Are you presently on probation from
6 any other court or on parole from any institution?

7 THE DEFENDANT: No.

8 THE COURT: Have you ever been arrested before?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you know if that was for a felony
11 or a misdemeanor or both?

12 THE DEFENDANT: Felony.

13 THE COURT: Mr. Coffman, does the Government have
14 sufficient evidence to prove this defendant guilty beyond a
15 reasonable doubt?

16 MR. COFFMAN: Yes, your Honor.

17 THE COURT: All right. Mr. Lababneh, in just a
18 minute, I'm going to ask Mr. Coffman to state what the
19 Government would prove if this case had gone to trial. I
20 want you to listen because after he does that I'm going to
21 ask you if that's what you did and what happened.

22 So, Mr. Coffman, would you go ahead and state what
23 the Government would prove if this case had gone to trial?

24 MR. COFFMAN: Your Honor, if this matter were to
25 proceed to trial, the Government would prove the following

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1 beyond a reasonable doubt:

2 First, that the conspiracy, agreement or
3 understanding between two or more persons to join together
4 to accomplish the unlawful purpose of possessing with intent
5 to distribute and distributing a controlled substance
6 described in Count I of the indictment in 1:14-CR-189 was
7 formed, reached or entered into by two or more persons; at
8 some time during the existence or life of the conspiracy,
9 agreement or understanding, the defendant knew the purpose
10 of the agreement and then deliberately joined the
11 conspiracy, agreement or understanding; and the
12 participation of the defendant in the conspiracy and the
13 acts of others in furtherance of the conspiracy reasonably
14 foreseeable to the defendant involved the possession with
15 intent to distribute and distribution of a mixture or
16 substance containing XLR11, a Schedule I controlled
17 substance.

18 Specifically, your Honor, the Government would
19 prove the following beyond a reasonable doubt:

20 On March 28, 2013, the defendant met with a Drug
21 Enforcement Administration confidential source in the Bronx,
22 New York. Their conversation was recorded. The
23 confidential source requested that the defendant send a
24 quantity of synthetic cannabinoid to the confidential source
25 in Troy, New York. The defendant stated that he would be

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1 traveling to Jordon for at least a month but that his
2 partner would, quote, be here doing my business and that the
3 synthetic cannabinoid would be driven to the confidential
4 source.

5 On May 21, 2013, while outside the United States,
6 the defendant spoke with a co-conspirator, C1, by phone and
7 instructed C1 to deliver a quantity of the synthetic
8 cannabinoid to the confidential source in Troy, New York.

9 And then on May 23, 2013, C1 delivered
10 approximately 99 kilograms of the synthetic cannabinoid
11 containing XLR11 to the confidential source in Troy,
12 New York.

13 Thank you, your Honor.

14 THE COURT: All right. Mr. Lababneh, you just
15 heard what the Government said they could prove if this case
16 had gone to trial. Is that what you did and what happened
17 in this case?

18 THE DEFENDANT: Yes.

19 THE COURT: Is that your understanding,
20 Mr. Kindlon?

21 MR. KINDLON: It is, your Honor.

22 THE COURT: There is a plea agreement, correct,
23 Mr. Coffman?

24 MR. COFFMAN: That's correct, your Honor.

25 THE COURT: Would you inform the Court and the

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1 defendant about any stipulations in the plea agreement
2 relating to the Sentencing Guidelines?

3 MR. COFFMAN: Yes, your Honor. The parties
4 stipulate in the plea agreement that the defendant is
5 personally accountable for approximately 99 kilograms of the
6 synthetic cannabinoid containing XLR11 in that the defendant
7 was personally involved in that quantity or it was
8 reasonably foreseeable to the defendant that the conspiracy
9 involved that quantity.

10 The only other stipulations in the plea agreement,
11 your Honor, relate to credit for acceptance of
12 responsibility, assuming the defendant meets the
13 requirements of the Sentencing Guidelines.

14 THE COURT: All right, thank you. Mr. Lababneh,
15 do you understand the plea agreement and the addendum, if
16 any?

17 THE DEFENDANT: Yes.

18 THE COURT: Have you carefully gone over that
19 document with your attorney?

20 THE DEFENDANT: Yes.

21 THE COURT: I must inform you that the Court is
22 not bound by any of the stipulations in the plea agreement.
23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that by pleading

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1 guilty you're waiving certain rights, including the right to
2 be presumed innocent until proven guilty beyond a reasonable
3 doubt; the right to plead not guilty; the right to a trial
4 by jury; the right to confront, cross-examine and compel the
5 attendance of witnesses at trial; the right to present
6 evidence in your defense; the right to remain silent and
7 refuse to be a witness against yourself by asserting the
8 privilege against self-incrimination. Do you understand
9 that you're waiving all of those rights?

10 THE DEFENDANT: Yes, Honor.

11 THE COURT: Do you understand that, as set forth
12 in the plea agreement, you are waiving any and all rights to
13 appeal or collaterally attack your conviction and any
14 sentence of 240 months or less, including any issues with
15 respect to the establishment of the advisory Sentencing
16 Guideline range or the reasonableness of the sentence
17 imposed?

18 THE DEFENDANT: Yes, Honor.

19 THE COURT: Do you understand that if the Court
20 decides to impose a sentence exceeding 240 months, this
21 would not permit you to withdraw your guilty plea or to
22 appeal or collaterally attack your conviction but would
23 merely allow you to appeal or collaterally attack the
24 sentence imposed by the Court to the extent permitted by the
25 law, specifically 18, United States Code, Section 3742 and

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1 28, United States Code, Section 2255?

2 THE DEFENDANT: Yes, Honor.

3 MR. COFFMAN: Your Honor, I'm sorry for
4 interrupting. The plea agreement, as far as the waiver, the
5 parties have -- and you may be way ahead of me and intend to
6 address this, just cut me off if that's the case -- is that
7 the case?

8 THE COURT: Say that again.

9 MR. COFFMAN: The waiver in the plea agreement,
10 the parties have agreed that the defendant waives the right
11 to appeal any sentence of 240 months or less, except the
12 defendant reserves the right to challenge on direct appeal a
13 decision by the District Court at sentencing to calculate
14 the base offense level using a conversion ratio of 1 to 167,
15 pursuant to the applicable Sentencing Guidelines.

16 THE COURT: Okay. So that's paragraph 7 of the
17 plea agreement?

18 MR. COFFMAN: That's right. Paragraph 7(b).

19 THE COURT: All right. And have you gone over
20 that with your client, Mr. Kindlon?

21 MR. KINDLON: Yes, your Honor.

22 THE COURT: All right.

23 MR. KINDLON: It's analogous to what we used to do
24 with crack cocaine, so we have discussed this.

25 THE COURT: All right. Thank you for that

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1 clarification. All right, Mr. Coffman, would you inform the
2 defendant and the Court what the sentencing possibilities
3 are in this case?

4 MR. COFFMAN: Yes, your Honor. The maximum
5 statutory term of imprisonment is 20 years; there is a
6 \$1 million maximum statutory fine; and there's a term of
7 supervised release with a three year maximum that would be
8 followed with a term of an additional two years -- up to an
9 additional two years if the conditions of that supervised
10 release were violated; there's a \$100 special assessment;
11 and then there are the collateral consequences of a felony
12 conviction, including for noncitizens likely deportation,
13 including the right -- the loss of the right to bear a
14 firearm and to vote.

15 THE COURT: All right. And do you know what the
16 projected Sentencing Guideline range might be?

17 MR. COFFMAN: Yes, your Honor. The Government has
18 prepared an estimate and I would just, as always, note that
19 this is an estimate and that if it were incorrect, it would
20 not enable the defendant to withdraw his plea.

21 The 99 kilograms of cannabinoid containing XLR11
22 translates into approximately 16,500 kilograms of marijuana,
23 which becomes base offense level 36. However, assuming the
24 anticipated amendments to the Guidelines take effect, that
25 would become 34. The defendant may also receive a plus two

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1 enhancement for his role in the offense. And assuming the
2 defendant receives the full three-point reduction for
3 acceptance of responsibility, the Government's estimate is
4 offense level 33, criminal history category II, which
5 becomes 151 to 188 months, assuming there are no further
6 reductions to the offense level.

7 THE COURT: All right, thank you. Mr. Lababneh,
8 has your attorney discussed the Sentencing Guidelines with
9 you and how they may apply to your case?

10 THE DEFENDANT: Yes, Honor.

11 THE COURT: Do you understand that I will consider
12 those Guidelines in determining your sentence?

13 THE DEFENDANT: Yes, Honor.

14 THE COURT: Do you understand that I won't be
15 able to determine what the guideline range will be until
16 after I receive and review the presentence investigation
17 report?

18 THE DEFENDANT: Yes, Honor.

19 THE COURT: Do you understand that after your
20 guideline range has been determined, the Court has the
21 authority, in some circumstances, to depart from the range
22 and impose a sentence that is more severe or less severe
23 than the sentence called for by the Guidelines?

24 THE DEFENDANT: Yes, Honor.

25 THE COURT: Do you understand that a finding of

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1 guilty may deprive you of certain valuable civil rights,
2 such as the right to vote, the right to hold public office,
3 the right to serve on a jury and the right to possess a
4 firearm.

5 THE DEFENDANT: Yes, Honor.

6 THE COURT: There are other factors that I have to
7 consider in sentencing you and I will tell you about those
8 now. These are under Section 3553(a) of Title 18, and they
9 include:

10 The nature and circumstances of the offense and
11 your history and characteristics as the defendant; the
12 seriousness of the offense; the need to promote respect for
13 the law and to provide just punishment for the offense; the
14 need to afford adequate deterrence of criminal conduct; the
15 need to protect the public from further crimes; the need to
16 provide you with appropriate education, vocational, medical
17 or other treatment in an effective manner; any pertinent
18 policy issues issued by the Sentencing Commission; the need
19 to avoid unwarranted sentence disparities; and the need to
20 provide restitution to the victims, if any, of the offense.

21 Do you understand, sir, that parole has been
22 abolished in the federal system and if you are sentenced to
23 prison, you will not be released on parole?

24 THE DEFENDANT: Yes, Honor.

25 THE COURT: Do you understand that if I decide I

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1 do not agree with the sentencing stipulations in the plea
2 agreement, other than what's set forth in the plea agreement
3 at paragraph 7, you may not withdraw your plea?

4 THE DEFENDANT: Yes, Honor.

5 THE COURT: Now that you've been informed of the
6 penalties, to the extent that we know them, and the
7 Sentencing Guidelines, and my role under the Guidelines, do
8 you still wish to plead guilty?

9 THE DEFENDANT: Yes, Honor.

10 THE COURT: Are you pleading guilty because you
11 are guilty and for no other reason?

12 THE DEFENDANT: Yes, Honor.

13 THE COURT: You've advised me that you've read the
14 indictment, that you understand the charge against you, and
15 that you've had an opportunity to discuss those charges with
16 your attorney. Do you now understand the penalties that
17 could be imposed upon you after pleading guilty?

18 THE DEFENDANT: Yes, Honor.

19 THE COURT: Other than what's contained in the
20 plea agreement and the addendum, if any, have any promises
21 been made to you as to what your sentence might be?

22 THE DEFENDANT: Yes, Honor.

23 THE COURT: Do you understand that in --

24 MR. COFFMAN: Your Honor, I think the defendant
25 said "yes" to the prior question.

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1 MR. KINDLON: Listen carefully.

2 THE COURT: Theresa, what was my last question?

3 (Record read back.)

4 THE COURT: Do you want to answer that?

5 THE DEFENDANT: No.

6 THE COURT: Okay. Do you understand that page 5
7 of the plea agreement, paragraph 7, states that you waive or
8 you give up any and all rights, including those conferred by
9 18, United States Code, Section 3742 and 28, United States
10 Code, Section 2241 and 2255 to appeal and/or collaterally
11 attack the following, except that you do not waive your
12 right to raise a claim based on the alleged ineffective
13 assistance of counsel? All of these are listed in paragraph
14 7, but to err on the side of caution, I'll go over them:
15 The conviction resulting from the defendant's guilty plea,
16 that's A; B, any sentence to a term of imprisonment of
17 240 months or less, except that the defendant reserves the
18 right to challenge on direct appeal a decision by the
19 District Court at sentencing to calculate the base offense
20 level using a conversion ratio of 1 to 167 pursuant to
21 United States Sentencing Guideline Section 2D1.1 and comment
22 note 8(D); C, any sentence to a fine within the maximum
23 permitted by law; D, any sentence to a term of supervised
24 release within the maximum permitted by law; E, any order of
25 forfeiture or restitution imposed by the Court that is

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1 consistent with governing law and is not contrary to the
2 terms of this agreement; and that nothing in this appeal
3 waiver is meant to be or should be construed as a
4 representation of or agreement concerning the appropriate
5 sentence in this case. Do you understand all that and has
6 your attorney gone over that with you, sir?

7 THE DEFENDANT: Yes, Honor.

8 THE COURT: All right. Mr. Kindlon, could you
9 state for the record briefly your background and experience
10 with particular reference to the Sentencing Guidelines?

11 MR. KINDLON: Yes, your Honor. Admitted to
12 practice in this court in 1974, have tried over a dozen
13 cases -- criminal cases -- to verdict in the Northern
14 District. Also admitted in the Western District, the Second
15 Circuit and the Supreme Court. I have been practicing under
16 the Guidelines since they came along in '84, I think it was,
17 or '86, and I've attended at least ten seminars on the
18 proper application of the Federal Sentencing Guidelines.

19 THE COURT: About how much time have you spent
20 with your client on this matter?

21 MR. KINDLON: I came in after this matter had been
22 commenced. When I came in, my client was represented by the
23 Federal Defender's Office and he had already been through
24 the initial detention hearing and arraignment with Judge
25 Hummel. I made a motion to reopen the detention hearing and

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1 submitted a brief. Judge Hummel denied that and
2 Mr. Lababneh and I have spent probably upwards of 30 hours,
3 either in person or on the telephone, discussing the facts
4 and circumstances of this case and also the question of
5 whether or not XLR11 is, indeed, a Schedule I controlled
6 substance. And so I would say it's been in excess of
7 30 hours altogether.

8 THE COURT: Have you advised Mr. Lababneh of his
9 rights, the nature of the charge against him and the
10 consequences of pleading guilty?

11 MR. KINDLON: Yes, your Honor.

12 THE COURT: Did you get discovery from the
13 Government on this case?

14 MR. KINDLON: I was given full discovery by the
15 Government, yes.

16 THE COURT: Have you made any promises or threats
17 to induce your client to plead guilty?

18 MR. KINDLON: No.

19 THE COURT: Are you satisfied that he is pleading
20 guilty freely and voluntarily with an understanding of the
21 charge and the nature -- pardon me, the nature of the charge
22 and the consequences?

23 MR. KINDLON: Yes, your Honor.

24 THE COURT: Do you know of any viable defense that
25 your client has to the charge?

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1 MR. KINDLON: There is no viable defense to
2 interpose to the charge here.

3 THE COURT: Do you know of any other reason why
4 the defendant should not plead guilty here today?

5 MR. KINDLON: No, your Honor.

6 THE COURT: All right, thank you, Mr. Kindlon.
7 I've taken into consideration the statements made to me by
8 you, Mr. Lababneh, as well as those made to me by your
9 attorney, Mr. Kindlon, and the Assistant United States
10 Attorney, Mr. Coffman. Based on those discussions, it is
11 the finding of the Court that you are pled guilty knowingly
12 and voluntarily, that you are competent and capable of
13 entering an informed plea, that you understand the charges
14 against you and the consequences of pleading guilty, that
15 there was a basis in fact for the Court accepting this plea
16 into the record. The plea agreement and the addendum, if
17 any, are incorporated into the record. I accept your plea
18 and you are now adjudged guilty of those offenses.

19 I direct Probation to prepare and submit a
20 presentence report. Counsel, the clerk will electrically
21 file the Northern District Uniform Presentence Order. Once
22 the presentence report is prepared, it will be lodged with
23 the clerk's office and you will receive it electrically
24 through ECF. Any objections to the report must be submitted
25 in writing to Probation within 14 days of receipt of the

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1 report.

2 Sentencing is set for December 12, 2014, at
3 10:00 AM, here in Albany. I'll repeat that date and time.
4 It's December 12, 2014, at 10:00 AM here in Albany.

5 Mr. Kindlon, what is your position in terms of
6 whether or not, just briefly, Mr. Lababneh should be
7 incarcerated pending sentencing?

8 MR. KINDLON: Your Honor, we're moving the Court
9 enter an order releasing Mr. Lababneh on conditions pending
10 sentencing. He has, within the last week, become the father
11 of a baby and I've spoken many times by telephone with his
12 wife and she's very eager to have him come home and help
13 out.

14 THE COURT: Is there any objection from the
15 Government on that?

16 MR. COFFMAN: There is no objection, your Honor,
17 subject to conditions.

18 THE COURT: All right. I've carefully reviewed
19 the materials that have been provided to me by Probation on
20 Mr. Lababneh and I've looked at all of the facts and
21 circumstances before me, and based upon what I've reviewed,
22 he does not appear to be a danger to the community.
23 Therefore, I'm going to order that Mr. Lababneh be released
24 subject to certain conditions, and although the defendant
25 will be signing these conditions, I'm going to go over them

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1 at this time.

2 The defendant shall not commit any offense in
3 violation of federal, state or local law while on release;
4 the defendant must cooperate in the collection of DNA, if
5 the collection is authorized by 42, United States Code,
6 14135a; the defendant shall immediately advise the Court,
7 defense counsel and the Assistant United States Attorney in
8 writing before any change in address and telephone number;
9 the defendant shall appear at all proceedings as required
10 and shall surrender for service of any sentence imposed as
11 directed; the defendant must promise to appear at all
12 proceedings as required by law; the defendant will execute
13 an unsecured bond binding the defendant to pay the United
14 States the sum of \$25,000 in the event of a failure to
15 appear as required or to surrender as directed for service
16 of any sentence imposed; the defendant will report to
17 pretrial services within 24 hours of release, and a phone
18 number will be provided for that; the defendant shall allow
19 a Probation Officer to visit at any time at the defendant's
20 home or elsewhere and shall permit confiscation of any
21 contraband observed in plain view of the Probation Officer;
22 the defendant shall refrain from possessing a firearm,
23 destructive device or other dangerous weapons; the defendant
24 will maintain or actively seek employment; if he hasn't done
25 so already, he will surrender his passport to the Clerk of

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1 the Court; he shall obtain no new passport; his travel is
2 restricted to the Northern and Southern Districts of New
3 York, unless approved by pretrial services and the Court;
4 you must remain at an authorized address as approved by
5 pretrial services or the Court; you must refrain from the
6 excessive use of alcohol; you must refrain from the
7 possession, use, distribution, importation or manufacture of
8 any and all controlled substance and any and all controlled
9 substance analogues as defined in 21, United States Code,
10 Section 802, except that possession and use of a controlled
11 substance properly prescribed by a licensed medical
12 practitioner is permitted; he must submit to any method of
13 testing required by the pretrial services office or the
14 supervising officer for determining whether he's using a
15 prohibited substance; these methods of testing may
16 include -- they may be used with random frequency and
17 include urine testing, the wearing of a sweat patch or a
18 remote alcohol testing system; he must participate and
19 successfully complete a program of inpatient and/or
20 outpatient substance abuse therapy and counseling approved
21 by pretrial services or the Court; the defendant will
22 contribute to the cost of the services rendered in an amount
23 to be determined by the Probation Officer based upon the
24 ability to pay or the availability of third-party payments;
25 he must refrain from obstructing or attempting to obstruct

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1 or tamper in any fashion with the efficiency and accuracy of
2 any prohibited substance testing or electronic monitoring
3 which are required as a condition of release; he must report
4 within 72 hours to pretrial services or the Court any
5 contact with any law enforcement personnel, including, but
6 not limited to, any arrest, questioning or traffic stop.

7 I will reiterate, Mr. Lababneh, that you must
8 appear for sentencing as I have set forth. If you do not
9 appear for sentencing as I have set forth, that, in and of
10 itself, is a criminal offense for which you could be subject
11 to imprisonment. All of the conditions of your release are
12 going to apply pending your sentencing. The penalties for
13 violating any of those conditions can be quite severe.

14 You must also meet with the Probation Officer so
15 that the Probation Officer can prepare a report. During
16 that meeting, you must cooperate with the Probation Officer,
17 answer questions and provide information. Your attorney may
18 be present if you wish.

19 I will remind Mr. Lababneh, as well as the
20 attorney, that if imprisonment is ordered, the defendant
21 will be remanded on the day of sentencing.

22 Is there anything further on behalf of the
23 Government?

24 MR. COFFMAN: No, your Honor. Thank you.

25 THE COURT: Is there anything further on behalf of

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1 the defendant?

2 MR. KINDLON: No, your Honor.

3 THE COURT: All right. Court stands adjourned.

4 (This matter adjourned at 1:18 PM.)

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6

7 CERTIFICATION OF OFFICIAL REPORTER

8

9

10 I, THERESA J. CASAL, RPR, CRR, CSR, Official
11 Realtime Court Reporter, in and for the United States
12 District Court for the Northern District of New York, do
13 hereby certify that pursuant to Section 753, Title 28,
14 United States Code, that the foregoing is a true and correct
15 transcript of the stenographically reported proceedings held
16 in the above-entitled matter and that the transcript page
17 format is in conformance with the regulations of the
18 Judicial Conference of the United States.

19

20 Dated this 9th day of July, 2015.

21

22 /s/ THERESA J. CASAL

23 THERESA J. CASAL, RPR, CRR, CSR

24 FEDERAL OFFICIAL COURT REPORTER

25

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